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ABSTRACT

Decisions made by federal and state courts during 1983 concerning school board and school district governance are reported in this chapter. Topics addressed include the powers and responsibilities of state and local boards of education; public access to board meetings; school boards' rights to make campaign contributions; the election, appointment, and recall of school board members; the organization of school districts; and student transportation. (PGD)

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GOVERNANCE

Thomas N. Jones

Introduction 1.0
State Boards of Education and Other Governmental Agencies 1.1
Powers and Duties of School Boards 1.2
- General Powers 1.2a
- Authority to Provide Instruction 1.2b
- Power to Contract 1.2c

The Public's Right to Know: Open Meeting Laws 1.3
- Meetings 1.3a
- Notice of Meetings 1.3b
- Taping Meetings of the Board 1.3c

School Boards and Conflicts of Interest 1.4
School District and Board Members Elections, Appointment, and Recall 1.5
- Voting Irregularities 1.5a
- Election Contests 1.5b
- Recall of Board Members 1.5c
- Method of Selection of Board Members 1.5d
- Disqualification of Candidates 1.5e

School District Organization 1.6
School Boards and the Transportation of Students 1.7
- Bus Contracts 1.7a
- Bids 1.7b
- Duty to Provide Transportation 1.7c

1.0 INTRODUCTION

School board members, school administrators, and educators must understand their respective legal duties and responsibilities in the public school setting. This chapter will address court cases handed down during 1983 concerning school board governance. Specifically, topics that will be covered include the powers of school boards, open meeting laws, school board elections, school district organization, and school transportation issues.

EA 017 501

1.1 STATE BOARDS OF EDUCATION AND OTHER GOVERNMENTAL AGENCIES

A recent Louisiana case confronted the question of the State Board of Elementary and Secondary Education's power to determine required courses of study.[1] The legislature passed a law requiring that balanced treatment of creation-science and evolution-science be given whenever course content dealt with the topic of origins. The state board argued that the law violated the state constitution because it usurped the board's power to set educational policy. The district court agreed, finding that the power to determine educational policy was vested in the board rather than the legislature. The Fifth Circuit referred the interpretation of the state constitution to the Louisiana Supreme Court.

The supreme court reviewed the history of the State Board of Elementary and Secondary Education. The board's predecessor under an earlier constitution had little authority. Under the present constitution the board was given the power to supervise and control public education and was given budgetary responsibility, but both grants of power were "as provided by Law." The court held that this referred to legislative acts. The board's power to determine educational policy was held to be limited, subject to the direction of the legislature. This relationship between the state board and the legislature was reinforced by another provision of the state constitution, which declared that the legislature was to provide for a public educational system.

The Ohio appeals court has considered the question of whether a school district can appeal to the courts a decision by the state board of education to assign it to a joint vocational school district.[2] The court ruled that since the proceedings held to determine whether the local school district should be assigned had provided for notice, an opportunity to present evidence, and the exercise of discretion by the state board, the proceedings were quasi-judicial in nature. As a result, the decision was appealable to the district court.

The North Dakota Supreme Court recently evaluated the dissolution and reorganization of a local school district.[3] The district had not operated a school for several years. The few resident school-age children attended in two other districts. The state board of education approved a county committee plan to divide the land involved between the two districts, and to apportion the dissolved district's assets and liabilities in the same proportions as the land transferred.

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1. Aguillard v. Treen, 440 So. 2d 704 (La. 1983).
2. *In re* New Reigel Local School Dist., 456 N.E.2d 1245 (Ohio Ct. App. 1982).
3. Garner Pub. School Dist. No. 10 v. Golden Valley Cty. Comm., 334 N.W.2d 665 (N.D. 1983).

The school district receiving less land and assets protested because there had been no opportunity to present evidence regarding the distribution of assets and liabilities. Since the state board is an administrative agency, the North Dakota court ruled that the board had to hold a hearing on this issue before a decision could be made.

Residents of a community outside the New York City School District tried to block the transfer of a residential drug treatment program out of the city and into local facilities previously used as a seminary and bible school.[4] The New York City Board of Education ran the program in a public school annex. The community argued that the commissioner of education failed to file an environmental impact statement and failed to consider factors statutorily mandated when a school district constructs new facilities. They also complained that the school annex would be attended by students up to age twenty-one, rather than the "children" identified by statute as eligible for out-of-district education.

The court found there to be no need for an environmental impact statement because there was no significant change in the use of the facilities. This fact also made the statute pertaining to construction of new facilities irrelevant. Finally, the court construed the language of the law permitting out-of-district education of "children" to apply to all individuals under twenty-one who remained eligible for free public education.

In Ohio, the appellate court has considered the effect of a school's charter on the merger of school districts and transfer of entire grades to other facilities.[5] When two local boards merged, the high school students of one of the former districts were immediately reassigned to the other district's high school. The state board of education noted these changes but did not revoke the charter permitting the first district's building to house high school classes. Several years later the combined local school board proposed the transfer of all eighth-grade students into the facilities of the second district. Parents protested. The trial court ruled that since the charters had not been revoked, the school board was required to keep eignth-grade *and* high school classes in the respective facilities of the first district.

The court of appeals disagreed. The school's charter was simply certification by the state board of education that the school met prescribed standards. It did not override the local board's statutory power to control the district's schools and assign students in what the board found to be an appropriate manner.

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4. Schweiss v. Ambach, 471 N.Y.S.2d 167 (N.Y. App. Div. 1983).
5. Ferris v. Paulding Exempted Village School Dist. Bd. of Educ., 454 N.E.2d 957 (Ohio Ct. App. 1982).

Nebraska has clarified the procedure to be followed in appealing the decision of a county superintendent of schools to dissolve a school district.[6] In this case, the notice of appeal, the appeal bond, and the request for transcripts were served on (rather than "filed" with) the superintendent, who thereby had no power to approve the surety of the appeal bond. The superintendent asserted that these were flaws sufficient to prevent the district court from having jurisdiction.

The court disagreed. The procedures followed were analogous to those used for appeals from the county courts to the district court, as indicated by statute. To hold otherwise would mean that the superintendent, the adverse party, could fail to approve the surety of an appeal bond and so deprive the appealing party of the right to appeal and the district court of jurisdiction. If there was a flaw in the bond, the proper remedy was to amend it, not dismiss the action.

1.2 POWERS AND DUTIES OF SCHOOL BOARDS

As a general principle, courts will not interfere with the discretionary powers of school boards unless the board's activities are arbitrary, capricious, or illegal. The source of power of a local board of education is from either the state legislature, state constitution, or the state board of education.

1.2a General Powers

The power of a local school board to exercise its discretion in selecting which of several schools to close was challenged in Illinois.[7] The board solicited a list of criteria for use in evaluating the schools involved. Ultimately the board decided to close the oldest school in the district, even though it was not a strong choice based on the criteria supplied to the board. No findings of fact accompanied this decision. A citizens' group challenged this decision as arbitrary and also argued that acceptance of the criteria list made that list a rule the board had to use in making the decision. The trial court agreed, enjoining closure of the school building.

The appeals court reversed. The school board is a governmental body charged with maintaining the schools; it acts in a legislative manner when it decides to close a building. This decision is discretionary. The board can choose between alternatives and cannot do anything that would limit this discretion. Binding itself to a set of criteria, which

6. Stigge v. Graves, 332 N.W.2d 49 (Neb. 1983).
7. Tyska v. Board of Educ. of Twp. High School Dist. 214, 453 N.E.2d 1344 (Ill. App. Ct. 1983).

the board had solicited to serve strictly as guidelines, would limit this discretion.

The court stated that only clearly arbitrary decisions would be reversed by the judiciary. There was no statutory requirement that findings of fact accompany a decision to close a school building. Ample hearings had been held and evidence taken by the board prior to its decision. The board was not required to allow the participation of the citizens' group in the decision-making process; its decision was not arbitrary.

A local school board's inability to contract away the power to decide whether or not to continue to use a particular school building was declared by the Missouri court.[8] The board, responding to pressure from a neighborhood coalition, had originally agreed to operate for three years an experimental school in a building previously scheduled for closing. While steps were taken to fulfill this agreement, two months before the school was to begin severe budget deficits forced abandonment of the project as well as cutbacks throughout the school system. The coalition sued.

The court held that the decision to open or close any school was a governmental function of the school board. Governmental functions could not be contracted away, and any agreement to do so was void.

The Texas Court of Civil Appeals has examined the inability of an individual school board member to bind the entire board.[9] Plaintiff was leasing a former schoolhouse; the lease contained an option to buy the property. During the term of the lease plaintiff told one board member he was exercising the option. The lease expired and the plaintiff continued to pay rent. Three years later he tried to pay the balance of the purchase price but the school board refused to surrender title. The trial court found in favor of the school board.

The appellate court agreed, finding that Texas law was settled that when the legislature had committed a matter to another governing body, that body could act on the matter only at properly called meetings of which all members had notice. There was no evidence that the board had appointed the individual member to be its agent for receipt of the notice regarding exercise of the option. Nor was there evidence that the board as a whole received actual notice in any way during the term of the lease of plaintiff's plan to buy the property.

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8. Coalition to Preserve Educ. on Westside v. Kansas City School Dist., 649 S.W.2d 533 (Mo. Ct. App. 1983).

9. Thermo Products Co. v. Chilton Indep. School Dist., 647 S.W.2d 728 (Tex. Civ. App. 1983).

A Florida appellate court has upheld the power of a local school board to change attendance boundaries so that racial mixtures could be maintained in the district's schools.[10] The school board had the authority to decide on a policy of continuing a racial mixture in each of its schools even after the system was initially desegregated. A boundary line change is a quasi-legislative function and will be overturned only if shown to be a flagrant abuse of discretion.

1.2b Authority to Provide Instruction

A New Jersey court has addressed the issue of a local board of education's control over a driver education program.[11] The local board required classroom hours in driver education, but behind-the-wheel training was offered only after school hours, for a fee, by the Adult Evening School. The education association argued that the New Jersey constitution's "Thorough and Efficient Clause" required the board to provide behind-the-wheel training as well as classroom instruction. The administrative law judge found that classroom instruction, but not behind-the-wheel training, was required by the state constitution. The commissioner of education set aside this finding, holding that no component of driver education was constitutionally mandated. The state board of education agreed.

On appeal, the superior court found the local board of education's decision to provide only classroom training to be discretionary and within the broad scope of the local board's power to determine curriculum. The availability of behind-the-wheel training only on an after-hours fee basis did not violate the "Thorough and Efficient Clause."

South Carolina has determined that public schools offering optional summer classes may charge tuition without violating statutory or constitutional mandates of free public education.[12] The legislature was directed by the state constitution to provide for free public education. It did so by establishing a school term of a certain length with teacher salaries paid for this term. Optional summer classes were not part of this term and so there was no obligation on the part of the school board to make them cost-free to students.

1.2c Power to Contract

A Tennessee case discussed control of school administration when both a county and the city serving as county seat maintained school

10. Plantation Residents Ass'n v. School Bd. of Broward Cty., 424 So. 2d 879 (Fla. Dist. Ct. App. 1982).
11. Parsippany-Troy Hills Educ. Ass'n v. Board of Educ., 457 A.2d 15 (N.J. Super. Ct. App. Div. 1983).
12. Washington v. Salisbury, 306 S.E.2d 600 (S.C. 1983).

systems.[13] The only high school was a part of the city system; county students attended at no charge. A new high school was built with county funds outside city limits to eliminate overcrowding. By a contract between the city and county school boards, the city's board of education was to administer both schools. The contract also provided that the new school was to be leased to the city so long as it was used as a school, and that the city's school commission would devise a zoning plan for assigning city and county students between the schools. The county agreed to pay a charge to the city for county students attending either school.

Eleven years later the county school board demanded an equal voice in administration. The city refused. The chancellor held the contract to be silent on the issue and decided for the county. The court of appeal agreed.

The Supreme Court of Tennessee reversed. The court held that the intent of the parties at the time the contract was made was controlling. Even though the contract did not directly address the question, the passage of eleven years without county objection to city control, plus the clear implications of the contract, established the right of the city board of education to exclusively administer both high schools.

A recent Michigan case confirms that a school board that subsequently ratifies unauthorized acts of its agent is bound by those acts, even when a resulting contract is merely oral.[14] Here, the board's exclusive land agent sold land to a local resident with the understanding that the school board and the purchaser would share equally in the costs of paving an access road. Minutes of the school board were consistent with the terms of the unwritten contract. These minutes were held to be sufficient evidence of ratification.

1.3 THE PUBLIC'S RIGHT TO KNOW: OPEN MEETING LAWS

1.3a Meetings

A local school board in Montana had its decision to fire a nontenured teacher challenged for being in violation of the state open meeting law.[15] At the close of its monthly public meeting at which many people spoke regarding the teacher's retention, the board indicated its plan to meet in special session four days later to discuss teacher contracts. Two days later a time for the meeting was set; no notice was printed because

13. Hamblen Cty. v. City of Morristown, 656 S.W.2d 331 (Tenn. 1983).
14. Bruno v. Zwirkoski, 335 N.W.2d 120 (Mich. Ct. App. 1983).
15. Sonstelie v. Board of Trustees School Dist. No. 10, 658 P.2d 413 (Mont. 1983).

of newspaper deadlines but local radio stations broadcast the information. School districts are not specifically required by Montana's Open Meeting Law to publish notice of special sessions of the board. At the special meeting the board went into closed session to discuss contracts. One month later, the day before the next regular public board meeting, the teacher was given termination notice. The issue was reconsidered, with further public input, at the public meeting.

The court found no violation of the open meeting law. Extensive public comment was heard by the board regarding the contract and the board properly went into executive session to protect individual teachers' privacy when deciding on contract renewal.

The "Florida Sunshine Law" has been held to apply to the organizational meeting of a county school board's sex education policy task force.[16] The law prohibits absention from voting by members of governmental boards and agencies. The court indicated, however, that a roll-call vote was not necessary to satisfy the statute. All that was required was that the minutes either record a specific vote or count a vote for each member present.

1.3b Notice of Meetings

The Minnesota Supreme Court had occasion to construe that state's open meeting law as it applied to local school boards.[17] The court held that whereas the law does not require prior public notice of chance or social gatherings, when all members of a school board and district administrators meet to gain background information on current issues faced by the board it is a "meeting" under the law. This is so even when no official action is taken at the gathering. Public notice of the meeting must be given because the events of the meeting could influence a later decision by the board.

The Minnesota Supreme Court again had occasion to interpret the state's open meeting law, as it applied to school boards, in a decision that dealt with the statutory procedures for closing a schoolhouse.[18]

The board published separate notice of the proposed closing of each of three high schools, citing declining enrollment and correspondingly reduced state revenues, and public hearing was held on each proposed closing. When the board was unable to agree on which school to close, a fact-finding panel was selected. No final hearing was held before the board acted on the panel's recommendation. Prior to the final decision,

16. Ruff v. School Bd. of Collier Cty., 426 So. 2d 1015 (Fla. Dist. Ct. App. 1983).
17. Saint Cloud Newspapers, Inc. v. District 742 Commun. Schools, 332 N.W.2d 1 (Minn. 1983).
18. Moberg v. Independent School Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

individual members of the board in groups from two to all members met regarding the situation. The trial court found these meetings violated the open meeting law; there was found to be no flaw in the notice and hearings held prior to the closing of one of the schools.

The Minnesota Supreme Court agreed that all notice and hearing requirements had been met. It held, however, that the state's open meeting law applied only to gatherings of a quorum or more of a governing body or its official subgroups during which members discuss, decide, or receive information as a group on issues relating to official business. In this case the only meeting of at least a quorum of board members was not for one of the specified purposes, and so no violation of law had occurred.

1.3c Taping Meetings of the Board

The right of individuals to tape-record school board meetings in public session under an open meeting law has been upheld in Rhode Island.[19] While constitutional issues were also involved, the federal district court settled the question by evaluating the heart of open meeting laws: The public's right to know, and the accountability of governing bodies. So long as the school board meets in public session, no compelling governmental interest or even rational basis exists for a ban on recording. The keeping of official minutes does not reduce the value of other records; official minutes are no less subject to alteration than are tape recordings; an individual speaking at a public meeting can only be helped, not inhibited, by the existence of an immediate record of his words in context.

1.4 SCHOOL BOARDS AND CONFLICTS OF INTEREST

The federal appellate court has considered the legality of school board contributions to a campaign to defeat a proposed tax reform.[20]

An amendment to the Colorado Constitution would have required prior voter approval of all legislation that would raise taxes. A local school board contributed cash from its public funds and employee labor to defeat the amendment. The board argued that the tax reform was the sort of situation intended by a state law allowing state and political subdivisions to contribute only to those campaigns involving issues in which they have official concerns. The board pointed out that its operation depended on tax revenues.

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19. Belcher v. Mansi, 569 F. Supp. 379 (D. R.I. 1983).
20. Campbell v. Joint Dist. No. 28-J, 704 F.2d 501 (10th Cir. 1983).

The court disagreed. It found that the statute authorized contributions only when the issues were ones that would come before the board for an official decision. As a result, the contributions made by the local school board were unlawful and had to be reimbursed.

1.5 SCHOOL DISTRICT AND BOARD MEMBERS ELECTIONS, APPOINTMENT, AND RECALL

1.5a Voting Irregularities

A 1984 lawsuit concerned the validity of an Alabama statute dealing with school board elections.[21] By law, residents of cities served by independent school boards could also vote in elections for county school board members. County residents sought to have the 1980 elections voided because the county vote was unconstitutionally diluted by the vote of city residents who allegedly lacked a sufficient interest in the county school system. The trial court found the law to be constitutional.

The appellate court reversed. The city residents contributed less than three percent of the county school system's budget, and a statewide educational trust fund provided money through a formula unrelated to local contributions. The court found that city residents lacked a substantial interest in the composition of the county school board and ordered new elections.

1.5b Election Contests

An Illinois court held that two ballots cast in a contested school tax referendum should not have been counted because they were spoiled.[22] State law required that exact steps be followed in preparing duplicate ballots. These steps were not followed, and, because the procedures were mandatory, the court could not permit those ballots to be counted, even though this caused the tax measure to pass rather than fail.

The Arkansas legislature faced a challenge to its new statute requiring school board members in districts beyond a certain population to be elected from zones within the district.[23] At the time, only one school district was large enough to be covered by the new law.

The state supreme court applied the general rule that acts of the legislature are presumed to be constitutional. The plaintiff had failed to prove that the statute was arbitrary, and any school district could arguably grow to the point of coming within the statute.

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21. Hogencamp v. Lee Cty. Bd. of Educ., 722 F.2d 720 (11th Cir. 1984).
22. Larson v. Board of Educ., Bement Commun. School Dist., 455 N.E.2d 866 (Ill. App. Ct. 1983).
23. Phillips v. Giddings, 646 S.W.2d 1 (Ark. 1983).

1.5c Recall of Board Members

In Mississippi, the recall of school board members was challenged under the Voting Rights Act.[24] As a result of petitioning, three black members of a local school board were faced with a recall referendum. They challenged the application of the state recall statute, alleging that it violated their civil rights and the civil rights of the minority voters who had elected them by denying the right to vote on account of race.

The court found that there was no case under the Voting Rights Act. While the recall referendum could alter the results of the prior election by removing blacks from office, the procedure would not restrict meaningful access of any minority to the political process. The right to vote does not entail the right to have a minority candidate elected or retained in office despite proper petitioning for recall.

A recent Texas case examined the procedures for challenging a duly elected school board member's further actions, on the basis that the member was not a registered voter at the time of election.[25] An individual voter filed suit, asking that the member be enjoined from further action on the school board. The trial court found that the member was in fact not a registered voter, and granted the injunction.

On appeal, the court agreed that the member was not a registered voter. It found, however, that under the Texas Constitution and State Election Code the state was an indispensable party to any suit for the removal of school board members. The individual voter had no interest in the outcome that was not equally a concern of the general public; the state was the only proper representative of this interest. Since the suit had not been brought by the state, the trial court had no authority to grant the injunction.

In a case from New Mexico, the state supreme court agreed with the trial court that the petitions for a school board recall election were valid despite premature signing of affidavits by those circulating the petitions.[26] The circulators mistakenly believed that they had to sign the affidavits before obtaining signatures, rather than afterwards as required by law. The court refused to invalidate the recall election results in the absence of legislation setting such a penalty for a technical flaw in the affidavits. The trial court had specifically found no evidence of fraud in the circulation procedures or signatures obtained.

1.5d Method of Selection of Board Members

A recent Georgia case declared invalid a referendum held to change the method of selecting the county school board because of the activities

24. Smith v. Winter, 717 F.2d 191 (5th Cir. 1983).
25. Blackmon v. Harland, 656 S.W.2d 239 (Tex. Civ. App. 1983).
26. Montoya v. Lopez, 659 P.2d 900 (N.M. 1983).

of certain poll watchers.[27] The individuals were employees of the county board of education, who "checked off" voters from a voting list. Sometimes this occurred within the zone where campaign activities are prohibited.

Even though it was not shown that these activities affected the referendum result, they were illegal. The court found this to be enough to taint the election.

The Kansas courts recently addressed two questions of school board procedure.[28] First, does a school board have the authority to consider, at a regular meeting, matters that did not appear on the published agenda? This involved the state open meeting law. Second, how many votes are required to fill a vacancy on a school board?

With regard to the freedom of the school board to consider matters outside a published agenda, the court noted that the Kansas Open Meeting Law does not require prior publication of agenda. The standing practice of the school board to permit addition of items to the agenda at the start of all regular meetings was approved.

The court turned to the statutes to resolve the question of votes needed to fill school board vacancies. It found that the general statute controlled, which required a vote by the majority of the full membership of the board. Thus, when two members of a seven-person school board resigned, a vote of four of the remaining members was required to fill the vacancies.

1.5e Disqualification of Candidates

In a New York case, a candidate for the local school board challenged a proceeding to invalidate her petition to be placed on the ballot.[29] The challenge was based on her alleged lack of residency in the district. The court had provided for notice of this proceeding to be served by first class mail, by personal service, or by leaving the notice at her residence plus mailing a copy. Notice was sent instead by certified mail and was not delivered until three days after the deadline. Nevertheless, the court found that the candidate had waived her valid objection to the defective service by appearing in court and litigating the question as to her eligibility as a candidate. It also found her not to be a legal resident of the district and so ineligible for a position on the school board.

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27. Stiles v. Ernest, 312 S.E.2d 337 (Ga. 1984).
28. Unified School Dist. No. 407 v. Fisk, 660 P.2d 533 (Kan. 1983).
29. Gregory v. Board of Elections of New York City, 461 N.Y.S.2d 430 (N.Y. App. Div. 1983).

1.6 SCHOOL DISTRICT ORGANIZATION

Mississippi recently confronted the issues raised when a municipality with its own school district annexed county land lying within a different district.[30] In one instance, residents of the annexed area petitioned for a referendum vote on whether their area was to be taken over by the municipal school district.

The court refused to allow the referendum. It interpreted the pertinent statutes and found that only when a municipality annexes land in a separate county is a referendum permitted. When, as here, the municipality's principal office is in the same county as the annexed land, the county school district automatically merged into the municipal school district.

In an Arkansas case resolving a dispute over school district boundaries, the appellate court indicated it would overturn the trial court decision only if it was clearly against the preponderance of the evidence.[31]

The Violet Hill and Oxford school districts both wanted the tax revenues and students of nine particular sections. Maps dated 1936 and 1971, plus the initial testimony of the County Supervisor in office from 1937 to 1972, showed these sections to be in the Violet Hill District (established in 1937). Two maps printed in 1976 both showed visible alterations of the boundary line placing the sections in the Oxford District. The appellate court found this to be sufficient evidence to support the trial court's finding that all nine sections lay within Violet Hill.

The Illinois appellate court addressed the appropriateness of injunctions and intervention by affected students in the situation of the transfer of property from one school district to another.[32] In this case, proceedings were pending with the Regional Board of School Trustees to discuss transfer of the land. The receiving district unilaterally decided to accept the five affected students and hold their out-of-district tuition in escrow until the board acted. The other school district sought to enjoin the receiving district. Parents of the affected students tried to intervene.

The court held that the school district had failed to show that irreparable harm would result if the students were transferred. There was no evidence that only inadequate legal remedies existed. It also

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30. Western Line Consol. School Dist. v. Greenville Mun. Sep. School Dist., 433 So. 2d 954 (Miss. 1983).

31. Izzard Cty. Bd. of Educ. v. Violet Hill School Dist. No. 1, 663 S.W.2d 207 (Ark. Ct. App. 1984).

32. Board of Educ. of Niles Twp. v. Board of Educ. of Northfield Twp., 445 N.E.2d 464 (Ill. App. Ct. 1983).

ruled that the trial court had not abused its discretion in permitting intervention, since no delay or prejudice to the original parties resulted.

The Illinois appeals courts have made it clear that there are certain factors that must be considered when school boards discuss the transfer of land from one school district to another.[33] The courts focus on the effects the transfer would have on the "whole child" and the "community of interest." The goal was to assign land to the school district most completely reflecting the sense of community that future residents would feel, and most fully providing for the social as well as educational growth of the students.

Nebraska was the setting of a case involving the transfer of property between school districts.[34] The property owner's land lay within two districts. The children attended school in the district containing the residence. The property owner requested that the freeholder board transfer all their land to the other district, asserting that it was in the best educative interests of the children to do so. The board of freeholders refused, but the trial court granted the property owner's petition. The board appealed.

The Nebraska Supreme Court held that its review was to be de novo. The court reexamined the testimony and held that what constitutes the best educative interests of a child was not solely a matter of expert opinion: the opinions of the parents and the student involved were also relevant. The court accepted proof of the accreditation of the respective schools, educational efficiency, management, and curricula and affirmed the district court. The rejection by the board of freeholders of the transfer request was found to have been arbitrary and capricious.

The Illinois appellate court recently confirmed the action by a regional school board that rejected a petition for detaching territory from one school district and annexing it to another.[35]

The school code did not indicate the form or procedure for such a petition. Plaintiffs collected signatures from a large number of registered voters residing in the detachment area, more than the number required by the election code for similar petitions if the plaintiffs' count of registered voters was correct. Defendants challenged the count of registered voters used by plaintiffs because it was several hundred voters less than the county's official registration lists showed. (Plaintiffs had gone to each address and asked about the registered voters shown there; if informed that the voter no longer lived there the name was crossed off.) Originally the school board accepted the

33. City Nat'l Bank of Kankakee v. Shott, 447 N.E.2d 478 (Ill. App. Ct. 1983).
34. Kaufmann Farms, Inc. v. Hutsell, 330 N.W.2d 907 (Neb. 1983).
35. Shapiro v. Regional Bd. of School Trustees of Cook Cty., 451 N.E.2d 1282 (Ill. App. Ct. 1983).

plaintiffs' count of total registered voters, found it had jurisdiction to consider the petition, but refused detachment after a hearing in which only one witness spoke against detachment. On appeal, the trial court ruled that the board's decision was against the weight of the evidence, but also that the board could reconsider whether it had jurisdiction.

The board did reconsider. Following a hearing in which both sides participated, the board determined that it lacked jurisdiction regarding whether plaintiffs' count of registered voters was faulty. Consequently, it dismissed the petition. It issued findings of fact and conclusions of law regarding jurisdiction at a later date.

The appeals court held that the board did not err by failing to put its findings "on the record" at the time of dismissing the petition. All that was required was that the findings ultimately made be based on the prior evidentiary record. The court also found the board to be correct in rejecting the plaintiffs' count of registered voters. The board was free at any time to reexamine whether it had jurisdiction, even without a suggestion from the court to do so. It was proper to use the election code alongside the school code in determining whether voters residing in the detachment zone were to be counted as registered. Plaintiffs should have relied on the official registration lists as required by the election code, or challenged those lists by the procedure set by code rather than through the use of hearsay.

1.7 SCHOOL BOARDS AND THE TRANSPORTATION OF STUDENTS

1.7a Bus Contracts

In a case involving notice of a claim for compensation against a school board, the New York Court of Appeals stressed the importance of compliance with procedures set by statute.[36]

During a wildcat strike, the bus service did not provide transportation under its contract with the board because of the alleged risk of violence. The company wanted to be paid under the contract for the period of the strike and so sent a letter to the Director of the Bureau of Pupil Transportation. The law required that notice of claims be given directly to the board of education. The bureau forwarded the letter to the board's office of legal services, which denied the claim.

The court indicated that whereas all that was required was substantial compliance with the statute setting out the contents of a notice of

36. Parochial Bus Sys., Inc. v. Board of Educ., City of New York, 470 N.Y.S.2d 564 (N.Y. 1983).

claim for compensation, it was necessary to deliver this notice directly to the proper governing body.

The New York courts upheld a local school board's decision to rescind petitioner's conditional contract for transporting students.[37] The court agreed that it was a reasonable determination that petitioner was not a "responsible bidder" due to a prior criminal conviction.

1.7b Bids

The Indiana courts have upheld the right of a school board to reject the sole bid on a busing contract when the rejection is not arbitrary or capricious.[38]

The bidder submitted the only bid on a certain route. Advisors to the school board recommended rejection of the bid because it was excessive when compared to similar routes. On rebidding, that route and four others were awarded by the board to a fleet bidder at a significant savings. On appeal to the trial court, the original bidder received damages for loss of the route.

The appeals court reversed. By statute the school board had the power to reject unsatisfactory bids. There was sufficient reason for the decision to reject the original bid and grant the route to the fleet bidder. The court refused to reverse a school board decision that was lawful and rational.

The New York courts have considered the impact of the state's competitive bidding statues on the awarding of busing contracts by local boards of education.[39] Petitioner complained that the board had failed to provide daily trip schedules for the year being bid; it also objected that the current year's daily trip schedule was provided only to its competition for the contract. In defense, the board asserted that current route information was available to all bidders and that petitioner knew this from past experience. The company awarded the route pointed out that no bidder knew the trip schedule for the bidding year, so all were treated equally. The court held that petitioner had made no reply to these defenses and no triable issues remained. The petition was dismissed.

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37. Crescent Bus Corp. v. Board of Educ. of New York City, 463 N.Y.S.2d 259 (N.Y. App. Div. 1983).
38. Metropolitan School Dist. of Martinsville v. Mason, 451 N.E.2d 349 (Ind. Ct. App. 1983).
39. We Transport, Inc. v. Board of Educ. of Uniondale, 462 N.Y.S.2d 286 (N.Y. App. Div. 1983).

1.7c Duty to Provide Transportation

The Wisconsin Court of Appeals recently interpreted an ambiguous state law pertaining to the transportation of school children.[40] By statute, school systems must provide transportation to all public and private school students residing more than a set distance from their school; there must be "reasonable uniformity" in transportation for public and private students. Cities beyond a certain population are exempted from the need to transport students if transportation through a common carrier is "available."

The court determined that the uniformity requirement referred to the distance a student had to live from school before qualifying for free transport. There could not be different distances set for public and private students. The court also settled that transportation by a common carrier need not be available to all students in the city before the city could exercise the option to rely on such transportation for students.

40. Saint John Vianney School v. Board of Educ. of School Dist. of Janesville, 336 N.W.2d 387 (Wis. Ct. App. 1983).